NOTES OF CASES.

Waters—Public Water Supply—Meters—Clandestine Taking of Water—Presumption—Settlement of Claim—Ratification—Repudiation—Waiver—Estoppel.—Brandon Electric Light Co. *v.* City of Brandon—Province of Manitoba—King's Bench—Mathers, C. J.—April 2—Held: 1. Where the consumer continued to use water through a concealed pipe knowing that the supply so obtained was not going through the meter after a change made from a flat rate to a meter rate and the placing of a meter on another and visible supply pipe, he is liable to pay on the basis of the capacity of such concealed pipe for the entire time for the water so wrongfully taken through it unless he can prove the quantity actually used, and he must pay at the general fixed rate without regard to any reduced rate applicable to the metered service. Lamb *v.* Kincaid, 37 S. C. R. 516, and Armory *v.* Delamirie, 1 Strange 505, applied.

2. In computing the amount of damages recoverable for clandestine use of a water supply the maxim "omnia præsumuntur contra spoliatorem" applies. Lamb *v.* Kincaid, 38 S. C. R. 516, specially referred to; see also, The King *v.* Chlopek, 1 D. L. R. 96.

3. Where a settlement of a claim for water rates by a municipal corporation against a consumer is made by unanimous resolution of the council, and the terms of the settlement are in part carried out by payment to and acceptance by the treasurer of the municipal corporation of successive installments of money due to the municipality under the settlement, there is such ratification of the contract as to preclude a successful attack upon it by reason of the settlement not having been formally adopted by the council.

4. The voluntary acting under an agreement for five months after knowledge of facts afterwards set up to prove that the agreement was obtained by fraud, duress, undue influence or extortion, is such an unequivocal affirmation of the contract as to amount to a waiver of the complainant's right to rescind the contract upon these grounds even if proved.

5. When one party makes against another a claim in the existence and amount of which he has an honest belief, and the other agrees to pay it without investigation, such agreement, made in good faith, cannot afterwards be repudiated on the ground that the amount is excessive. Dixon *v.* Evans, L. R. 5 E. & I. Ap. 606, applied; Smith *v.* Cuff, 6 M. & S. 160, distinguished; see also, Leake on Contracts, 6th ed., p. 259, and Lindsay Petroleum Co. *v.* Hurd, L. R. 5 P. C. 240. —Canadian Case in Canada Law Journal.

Damages for Breach of Contract.—An English Case on Damages for Breach of Contract and Liquidated Damages or Penalty, is Web-

ster *v.* Bosanquet (1912) A. C. 394. This was an appeal from the Supreme Court of Ceylon reversing a judgment of the District Court of Colombo as to the proper construction of a contract which provided that on breach thereof a specified amount should be paid "as liquidated damages, and not as a penalty." The court below had held that the sum specified was, notwithstanding the terms of the contract, as a penalty. The contract in question was made on the dissolution of partnership between the plaintiff and defendant which contained a provision that the defendant would not for ten years sell the whole or any part of the crops of certain estates without first offering to the plaintiff the option of buying the same, and if the defendant should commit a breach of the contract he should pay to the plaintiff £500 as liquidated damages and not as a penalty. The defendant committed a breach of the contract. The Judicial Committee of the Privy Council (Lords Macnaghten, Shaw, Mersey, and Robson), following Clydebank Engineering Co. *v.* Castaneda (1905), A. C. 6, hold that in such cases it is impossible to lay down any abstract rule, but that the facts and circumstances of each case have to be considered, and the court has to consider whether or not the amount fixed as damages is extravagant, exorbitant or unconscionable at the time when the stipulation is made, that is to say, in regard to any possible amount of damages which may be conceived to have been within the contemplation of the parties when they made the contract. In the present case their Lordships thought that at the time the contract was made it was impossible to foresee the extent of the injury which the plaintiff might sustain by the defendant's breach of the contract, and that the damages, though very substantial, might be difficult of proof; and that the amount fixed in the present case, having regard to the circumstances, could not be reasonably regarded as extravagant, or unreasonable; they, therefore, held that the amount named was recoverable as liquidated damages. —Canada Law Journal.

Note.—This is precisely the rule laid down in Stony Creek Lumber Co. *v.* Fields, 102 Va. 1, 45 S. E. 797. See Crawford *v.* Heatwole, 15 V. L. R. 787 and extensive note.

Interest on Legacies.—The House of Lords have affirmed the judgment of the Court of Appeal in In re Walford, Kenyon *v.* Walford (81 L. J., Ch. 128), where the question was as to the date from which the interest of a demonstrative legacy begins to run. The mere fact that a demonstrative legacy is to be paid out of a reversionary fund affords no exception to the usual rule that, where no time is fixed for payment, the legacy carries interest from the date twelve months after the death of the testator. In this case the testator bequeathed to his sister "the sum of £10,000 as her sole and absolute property, to be paid out of the estate and effects inherited by me from my